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Attorneys for Defendants
KEVIN VU and CAFE BONITA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC.

No. C 07 04353 WHA

vs.

DECLARATION OF CHRISTOPHER
HAYS IN OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION

KEVIN VU, etc., et al.,

Defendants.

Hearing Date: 7 February 2008
Time: 8:00 a.m.
Courtroom: 9

I, Christopher Hays, hereby declare under penalty of perjury that:

1. I am an attorney at law authorized to practice in the courts of the State of California and in the United States District Court, Northern District of California, and am the attorney for Defendants KEVIN VU and CAFE BONITA, INC. herein. If called upon I would and could competently testify to the matters set forth in this declaration based upon my personal knowledge.

2. Michael W. De Vries, one of the attorneys for Plaintiff Sinhdarella, Inc., states in paragraph 10 of his Declaration in Support of Plaintiff's Motion for Preliminary Injunction, that

During a meet and confer call on November 13, 2007, Christopher Hays, current counsel for defendant Kevin Vu, told me that he had advised his client to resume use of the name "The Boiling Crab."

3. Neither my telephone conference notes nor my billing records

1 indicate that I spoke with Mr. De Vries on 13 November 2007, but both of said
2 records indicate that I spoke with Mr. De Vries and his associate Andrew Fossum
3 on 15 November 2007, the former record indicating that said conversation began
4 at 4:00 pm.

5 4. During said conversation, I told Mr. De Vries that I would likely be
6 advising my client to resume using the name "The Boiling Crab" because its
7 "continuous" use may be a defense under 15 U.S.C. § 1115(a)(5).

8 5. The Joint Case Management Statement, filed herein 6 days
9 thereafter, likewise reflects the reason for my advice to my client as follows:

10 Defendant asserts a defense under 15 U.S.C. § 1115(b)(5), claiming
11 that he adopted "The Boiling Crab" name before Sinhdarella filed its
12 application for Trademark registration in good faith and without actual
13 or constructive knowledge of Sinhdarella's prior use and trademark
14 rights in its THE BOILING CRAB mark. . . . Defendant contends that
15 Sinhdarella should be estopped from denying that Defendant's use of
16 "the Boiling Crab" was continuous since the brief period during which it
17 was not used was occasioned by threats made by Sinhdarella's
18 counsel that Sinhdarella would have the U.S. Marshal close
19 Defendant's restaurant if Defendant did not immediately stop using
20 "The Boiling Crab" name. Defendant was not represented by counsel
21 when this threat was made. [Joint Case Management Statement filed
22 herein on 21 November 2007, p. 6, lines 3-15 (footnotes omitted).]

23 I declare under penalty of perjury under the laws of the United States
24 that the foregoing is true and correct, and that this declaration is executed
25 at San Francisco, California on the date set forth below.

26 Dated: 17 January 2008.

27 

28 Christopher Hays